IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

MFA.No. 1172 of 2001(D)

O.P(MV).NO.538/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM.
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APPELLANT:
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1. **AIRLEE CHERIAN, AGED 27 YEARS,**
   W/O. DECEASED V.J. PAULOSE,
   HOUSE WIFE, AIRLEE NIVAS, BHEEMANAD (P.O),
   MANNARKKAD TALUK, PALAKKAD DISTRICT.

2. **LINITA SARA PAUL, AGED 3 YEARS (MINOR),**
   D/O. DECEASED V.J. PAULOSE,
   REPRESENTED BY MOTHER AND GUARDIAN
   AIRLEE CHERIAN, AIRLEE NIVAS,
   BHEEMANAD.P.O., MANNARKKAD TALUK,
   PALAKKAD DISTRICT.

3. **V.V. JOSEPH, AGED 69 YEARS,**
   FATHER OF DECEASED V.J. PAULOSE,
   AGRICULTURIST, VAZHIYIL HOUSE,
   PULIYAKKODE, PATHIRIKKODE.P.O.,
   MELATTUR, MALAPPURAM DISTRICT.

4. **SARAMMA JOSEPH, AGED 63 YEARS,**
   MOTHER OF DECEASED V.J. PAULOSE,
   VAZHIYIL HOUSE, PULIYAKKODE,
   PATHIRIKKODE.P.O., MELATTUR,
   MALAPPURAM DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR.

M.F.A. NO. 1172/2001:

RESPONDENTS/ RESPONDENTS:
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1. **A. GURUSWAMY, AGE NOT KNOWN,**
   S/O. ALAYASWAMY, 3/363/E2, RAJAKKAPATTI,
   CHETTINAYAKKANPATTI .P.O.,
   DINDIGUL, TAMIL NADU.

2. **V. ALAGAR, S/O. VENUGOPAL, AGE NOT KNOWN,**
   ALAGARNYAKKANPATTI, K. PUTHUKKOTTA POST,
   REDDIAR STREET, DINDIGUL, TAMIL NADU.

3. **THE UNITED INDIA INSURANCE COMPANY LTD.,**
   DINDIGUL, TAMIL NADU.

R3. BY ADV. SRI.JOHN KOSHY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A. No. 1172 of 2001

Dated this the 29th day of November, 2007

Judgment

Koshy,J.

A 29 year old youngster sustained fatal injuries in a motor accident on 21.8.1997. His widow and a four month old child along with parents filed an application for compensation. The tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. The tribunal awarded an amount of Rs.6,88,052/- against a claim of Rs.2,00,000/-. Only dispute is regarding quantum of compensation. Deceased was an employee in the Rubber Board, a statutory Corporation under the Ministry of Commerce, Government of India. Actual monthly salary at the time of accident was Rs.4,608/-, but, on implementation of the Fifth Pay Commission, his salary was revised to Rs.5,468/- with effect from 1.1.1996 out of which basic pay was Rs.4,750/- and D.A. Rs.618/-. D.A. and basic come to Rs.5,368/-. Ext.A8 certificate shows that arrears of wages are disbursed to his family based on the retrospective revision. Therefore, salary at the time of accident was Rs.5,368/-, but,

tribunal has taken only Rs.4,608/-. It is the contention of the appellants that being employed in a statutory corporation, there will be periodical revision of salary. Apart from monthly increments and promotional prospects etc., terminal benefits are given on the basis of last drawn wages. Considering the prospects in the employment and taking the principles enunciated by the Supreme Court in General Manager, K.S.R.T.C. v. Susamma Thomas and others ((1994) 2 SCC 176), it was argued that at least Rs.9,000/- should be fixed as monthly income and compensation should be calculated. We are of the opinion that on the basis of the retrospective revision, his basic salary and DA was Rs.5,368/- at the time of accident. Even though future prospects have also to be taken into account, vagaries of life cannot be predicted. Rs.5,400/- can be taken as the monthly income and after deducting one-third for personal expenses, loss of dependency will be Rs.3,600/- per month. It is argued that death was in the prime age of his life. In view of the reduction in interest rate and increase in life expectancy, the multiplier fixed is very low. In Smt.Supe Dei and others v. National Insurance Co. Ltd. and another (JT 2002 (Suppl.1) SC 451) and in A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689), it was held that in 166 claims also, in the absence of exceptional

circumstances, second schedule shall be followed. Tribunal fixed multiplier following the second schedule. Hence, no enhancement of multiplier is needed. If that be so, compensation payable for loss of dependency will be Rs.3,600/- x 12 x 18 = Rs.7,77,600/-. The tribunal has awarded Rs.6,63,552/-. So, additional amount payable will be Rs.1,14,048/-.

2. It is submitted that first appellant lost her husband and she was aged only 24 years and the child was aged only four months. The child lost love and affection and fatherly care. Tribunal has awarded only Rs.10,000/- towards consortium and loss of love and affection. We are of the opinion that Rs.10,000/- can be awarded as loss of consortium and another Rs.10,000/- can be awarded for loss of love and affection and fatherly care to the child. It was argued that amounts awarded under other heads are inadequate. However, considering the total amount no further enhancement is needed. Therefore, claimants are entitled to an additional amount of Rs.1,24,048/- over and above the amount decreed by the tribunal. Out of the above, Rs.24,000/- should be given to appellants 3 and 4 and out of the balance amount, one-third can be given to the widow, first appellant and balance should be deposited in a nationalised bank in the name of second

appellant, daughter of the deceased enabling her to withdraw the same at the time when she attains the majority.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1172 of 2001

Judgment

Dated:29th November, 2007